

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUAN JOEL GARCIA,

Petitioner,

vs.

No. CIV-08-0881 BB/KBM

**TIMOTHY HATCH, Warden, and
GARY K. KING, Attorney General for the
State of New Mexico,**

Respondents.

**RESPONDENTS' MOTION FOR AN EXTENSION
OF TIME TO FILE AN ANSWER**

Respondents, by counsel, Margaret McLean, Assistant Attorney General, hereby move this Court for a sixty (60) day extension of time, or until February 13, 2009, to file an Answer. As grounds for this motion, Respondents state as follows:

1. By order of this Court, an Answer is currently due on or before December 15, 2008. Doc. 7.
2. In the Second Judicial Court, Bernalillo County, after a jury trial, Petitioner was found guilty of:

- Two (2) counts of attempt to commit criminal sexual penetration (commission of a felony)(firearm enhancement);
- Two (2) counts of kidnapping (victim freed in safe place and no great bodily harm);
- One (1) count of aggravated burglary (deadly weapon)(firearm enhancement);
- One (1) count of armed robbery (firearm enhancement);
- One (1) count of child abuse (intentionally caused)(no death or great bodily harm);
- One (1) count of conspiracy to commit aggravated burglary;
- One (1) count of conspiracy to commit kidnapping (victim freed in safe place and no great bodily harm);
- One (1) count of conspiracy to commit armed robbery; and,
- Six (6) counts of battery, all misdemeanors.

3. Petitioner was sentenced on August 7, 2003 to a total of sixty-one (61) years with three (3) years suspended, for a total incarceration period of fifty-eight (58) years, followed by a term of probation.

4. Petitioner completed the direct appeal process on July 23, 2004, with the issuance of a mandate affirming his conviction.

5. Ten months later Petitioner filed a state petition for writ of habeas corpus, Rule 5-802 NMRA, in the Second Judicial District, Bernalillo County. Petitioner was appointed counsel and an amended petition was filed on September 21, 2006. The State filed a response on March 5, 2007. The petition was dismissed on April 19, 2007. A petition for certiorari review was filed in the New Mexico Supreme Court and was dismissed by an order on July 10, 2008.

6. Counsel for Respondents has begun gathering the necessary documents needed in order to file an answer. Part of the delay is the direct appeal file was closed on August 13, 2004 and sent to the State of New Mexico Archives facility. Counsel has ordered the file and expects to receive it in the next few weeks. Upon receipt, counsel will review the file and retrieve the documents needed to complete an answer. Additionally counsel needs documents from both the New Mexico Supreme Court and the Second Judicial District, Bernalillo County. With the upcoming holiday season and other case responsibilities, counsel will be unable to complete the answer and requests an additional sixty (60) days to prepare and file an answer.

7. Petitioner appears pro se. Petitioner's position on this motion was not determined.

WHEREFORE Respondents respectfully request this Court grant a sixty (60) day extension of time, or until February 13, 2009, to file an Answer to the Petition.

Respectfully submitted,

GARY K. KING
Attorney General

Electronically filed
/s/ Margaret McLean
Margaret McLean
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December 2008, I filed the foregoing RESPONDENTS' MOTION FOR AN EXTENSION OF TIME TO FILE AN ANSWER electronically through the CM/ECF system. I further certify that on such date I served the foregoing on the following non-CM/ECF participant in the manner indicated:

Via first-class mail, postage prepaid, and addressed to:

Juan Joel Garcia #59634
Guadalupe County Correctional Facility
Post Office Box 520
Santa Rosa, New Mexico 88435-0520

/s/ Margaret McLean
Margaret McLean
Assistant Attorney General